United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

75-2004
~~74-8131~~

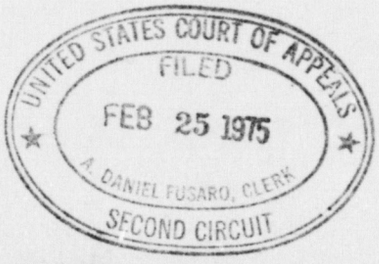
To be argued by
MICHAEL YOUNG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel. EDWARD F. LaBELLE, Petitioner-Appellant, -against- THE HONORABLE J.E. LaVALLEE, Superintendent, Clinton Correctional Facility, Respondent-Appellee.	Docket No. 74-8131

APPENDIX TO THE BRIEF FOR PETITIONER-APPELLANT

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
DENYING A WRIT OF HABEAS CORPUS



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PAGINATION AS IN ORIGINAL COPY

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

73-CV- 519

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA ex rel EDWARD F. LaBELLE, Petitioner vs. HON. J. EDWIN LaVALLEE, Superintendent, Clinton Correctional Facility, Dannemora, New York, Respondent	For plaintiff: For defendant:

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 5 mailed	Clerk								
J.S. 6 mailed	Marshal								
Basis of Action: Petition for Writ of Habeas Corpus	Docket fee								
	Witness fees								
Action arose at:	Depositions								

73-CV-518

DATE 1973	PROCEEDINGS	Date Ord Judgment
Nov. 20	(1) Filed Petition for Writ of Habeas Corpus	
" 20	(2) " Memorandum-Decision and Order (11/16/73) denying and dismissing Petiti Writ for failure to overcome the statutory presumption of correctness applica to state court determination. Leave to proceed in forma pauperis is granted. Clerk is directed to file papers without payment of fees-HON. E.PORT, USDJ	
" 20	(3) Filed judgment	
1974 4/15	Sent Uncertified copy of record on appeal to CCA, 2nd Cir.	
4/18/ 1975	(4) Filed receipt of CCA for papers forwarded	
Jan.17	(5) " copy of judgment of CCA granting motion for certificate of probal cause, leave to proceed in forma pauperis and assignment of counsel	

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. EDWARD F. LaBELLE,

Petitioner,

-vs- 73-CV-

HON. J. EDWIN LaVALLEE, Superintendent, Clinton Correctional Facility, Dannemora, New York,

Respondent.

EDMUND PORT, Judge

Memorandum-Decision and Order

The Clerk of the court has sent to me for my consideration a petition, which the court has re-captioned in proper form, for a writ of habeas corpus together with an affidavit in forma pauperis and for the assignment of counsel from a state inmate presently confined in the Clinton Correctional Facility, Dannemora, New York.

The petitioner was originally convicted in the Rensselaer County Court in 1964 of Murder 1st degree and was sentenced to be electrocuted. The conviction was affirmed by the Court of Appeals. People v. LaBelle, 16 NY2d 807 (1965). Thereafter his sentence was commuted to life imprisonment. On December 3, 1968, the United States Court of Appeals, Second Circuit, reversed the judgment of conviction[1] and directed petitioner's retrial. On retrial, the petitioner was convicted of the crime of Murder 1st degree and sentenced on July 2, 1970, to a term of life

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1. United States ex rel. Edward F. LaBelle v. Mancusi, 404 F.2d 690 (2d Cir. 1968). The conviction was vacated on the ground that Bruton v. United States, 391 U.S. 123 (1968), was violated on LaBelle's trial.

imprisonment. The Appellate Division affirmed[2], and leave to appeal to the Court of Appeals is alleged to have been denied on July 28, 1972.

The petition presents three contentions: (1) that petitioner was unlawfully arrested, (2) that subsequent thereto his automobile was illegally and unconstitutionally searched, and (3) his apartment was illegally and unconstitutionally searched. As a result of the arrest and subsequent searches, extremely damaging evidence, linking petitioner to the crime, was introduced upon his trial.

The facts in this case are well set forth by the Appellate Division in 37 App. Div. 2d 135, and will not be restated in the interest of brevity.

I have obtained from the Rensselaer County Clerk copies of the entire record on appeal to the Appellate Division, Third Department from petitioner's conviction on his retrial.[3]

Upon a careful examination of all the papers and upon all the state court records in this action, I am convinced that the state court determination, in connection with the issues raised herein, was correct for the reasons set forth in the Appellate Division's determination in 37 App.Div.2d 135, the reasoning of which I hereby adopt.

2. 37 App. Div. 2d 135 (3rd Dept. 1971.)

3. Consisting of Volume I, II and the Exhibit Volume and copies of Respondent's and Appellant's briefs on appeal. Volume I contains the minutes of the pretrial suppression hearing, the trial judge's decision and order thereon at pages 62-231. These records are being returned directly to the Rensselaer County Clerk with the Court's appreciation for supplying the same.

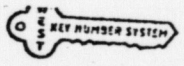
I am of the opinion that the petitioner has failed to overcome the statutory presumption of correctness applicable to the state court determination and the petition will be denied and dismissed. 28 U.S.C.§2254(d); Townsend v. Sain, 372 U.S. 293 (1963).

For the reasons herein, it is

ORDERED, that the petition herein be and the same hereby is denied and dismissed. Leave to proceed in forma pauperis is granted, and the Clerk is directed to file the papers herein without the payment of fees.

Edmund Port
United States District Judge

Dated: November 16, 1973.
Auburn, New York.



37 A.D.2d 135

The PEOPLE of the State of New York, Respondent, v. Edward F. LaBELLE, Appellant.

Supreme Court, Appellate Division, Third Department.

June 28, 1971.

The County Court, Rensselaer County, Matthew M. Dunne, J., found defendant guilty of murder in first degree and he appealed. The Supreme Court, Appellate Division, Simons, J., held that where officers did not know of invalidity of arrest warrant and had probable cause for arrest of defendant who was driving automobile, and officer as result of checking to see if brake on vehicle had been set observed blood stains on vehicle and advised lieutenant who knew of murder which likely involved use of vehicle and who ordered search, search of vehicle after it

was removed to police garage was proper and evidence found was admissible.

Affirmed.

1. Arrest ⇐63(4)

Officers who did not know that arrest warrant was invalid because magistrate issued it on supporting papers which were legally insufficient and who had been advised of details of offense by superior who had talked to victim had probable cause to make arrest even though they relied on remote or proximate hearsay in acting.

2. Searches and Seizures ⇐3.3(7)

If there is reasonable belief before search begins that automobile contains contraband or evidence of crime, search may lawfully be made.

3. Arrest ⇐71.1(8)
Criminal Law ⇐394.4(9)

Where officers did not know of invalidity of arrest warrant and had probable cause for arrest of defendant who was driving automobile, and officer as result of checking to see if brake on vehicle had been set observed blood stains on vehicle and advised lieutenant who knew of murder which likely involved use of vehicle and who ordered search, search of vehicle after it was removed to police garage was proper and evidence found was admissible. U.S.C.A.Const. Amend. 4.

Con G. Cholakis, Dist. Atty. of Rensselaer County, Troy (Richard P. Wallace, Troy, of counsel), for respondent.

Marvin I. Honig, Troy, for appellant.

Before REYNOLDS, J. P., and STALEY, GREENBLOTT, SWEENEY, and SIMONS, JJ.

SIMONS, Justice.

This is an appeal from a judgment of the County Court of Rensselaer County, upon a verdict convicting the defendant of the crime of murder in the first degree (Penal Law, § 1044, subd. 2).[1]

The appellant has been convicted of causing the death of 15 year old Rosemary Snay November 28, 1963 during the commission of a rape. The evidence is largely circumstantial, but is sufficient to sustain the conviction if, as a matter of law, evidence acquired in a search of defendant's automobile without a warrant and a subsequent search of his apartment with a warrant was admissible at the trial. The search of

[1] For related cases, see People v. LaBelle, 44 Misc.2d 327, 253 N.Y.S.2d 901; People v. LaBelle, 16 N.Y.2d 807, 263 N.Y.S.2d 5, 210 N.E.2d 358; People v. LaBelle, 24 A.D.2d 350, 226 N.Y.S.2d 165; People v. LaBelle, 18 N.Y.2d 405, 276 N.Y.S.2d 105, 222 N.E.2d 727; People v. LaBelle, App.Div., 322 N.Y.S.2d 9, dec. herewith.

the automobile produced extensive damaging evidence connecting appellant with the murder and if that search was permissible appellant concedes there existed probable cause for the warrant to search the apartment.

Rosemary Snay was last seen alive on November 28, 1963 near her home in Cohoes, New York. On November 30, 1963 her body was found face down in a stream running through a culvert under a country road. When found, the midsection of the body was exposed and her clothes were around her ankles and arms, torn in several places and bloodied. Her skull had been crushed by several blows and there was evidence she had engaged in sexual intercourse around the time of her death.

[1] At about 7:00 A.M. December 3, 1963 appellant was stopped in his car on an icy hill in the City of Troy while driving to work. He was arrested by officers Keating and Garrett of the New York State Bureau of Criminal Investigation for assault, third degree, upon the complaint of Mary Dolan, age 14. She charged that during the early evening of November 28, 1963 two men in the car owned by Edward LaBelle, twice tried to grab her and force her into the car while she was walking home. That warrant was invalid, a fact unknown to the arresting officers, because the magistrate issued it on supporting papers which were legally insufficient. Nevertheless, the arrest was lawful because made upon probable cause held by the arresting officers. (Dearinger v. United States, 9 Cir., 378 F.2d 346, cert. den. 389 U.S. 885, 88 S.Ct. 156, 19 L.Ed.2d 183.) The details of the assault were communicated to Keating and Garrett by Lieutenant Brandon who had talked to Mary Dolan. The police officers had probable cause to make the arrest even though they relied on remote or proximate hearsay in acting. (United States v. Simon, 7 Cir., 409 F.2d 474, cert. den. 396 U.S. 829, 90 S.Ct. 79, 24 L.Ed.2d 79.)

After the arrest of LaBelle, Lieutenant Brandon was notified and he dispatched officer White to go to the scene and assist the arresting officers. When White arrived, he checked to see if the brake of appellant's car was set and in doing so noticed the ignition was still on. While leaning into the car to turn off the key, White observed what he believed to be blood stains on the dashboard. He called Brandon, told him the car was stopped in an unsafe location and that he noticed apparent blood stains inside it. Brandon directed removal of the car to the police garage for a search. The search revealed numerous blood stains, all human, and several identified as the same type blood as that of Rosemary Snay; several hairs of the same type, quality and color as the victim's were found in the car; a zipper pull which fit the zipper on the victim's pants was found and a part of a brassiere strap was found which matched a missing part of the brassiere on the body. A crowbar

and a hatchet were in the trunk and both contained blood and human hairs having the same physical characteristics as the victim's hair.

Appellant's argument is that even if this was a lawful arrest, and he denies it, a warrantless search is invalid unless made incident to the arrest. (Preston v. United States, 376 U.S. 364, 84 S.Ct. 881, 11 L.Ed. 2d 777; People v. Lewis, 26 N.Y.2d 547, 552, 311 N.Y.S.2d 905, 908, 260 N.E.2d 538, 541.) Since the search of the LaBelle car was made at a time and place remote from the arrest and was not incidental to it, appellant says the evidence was unlawfully obtained and should have been suppressed.

[2] An automobile may be searched without a warrant if there is probable cause to justify the search. (Carroll v. United States, 267 U. S. 132, 158, 45 S.Ct. 280, 69 L.Ed. 543.) The probable cause exists entirely independent of the arrest of the defendant. The search and seizure is lawful not because incidental to the arrest, but because of independent probable cause to search the car. (Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419.) If there is a reasonable belief before the search begins that the car contains contraband or evidence of a crime, the search may lawfully be made. (People v. Brown, 28 N.Y. 2d 282, 321 N.Y.S.2d 573, 270 N.E.2d 302 [1971].)

Arguably, the *Chambers* and *Brown* decisions are distinguishable because in both cases arrests were made and reasonable grounds existed to believe that evidence of the crime for which the defendants were arrested would be found in the cars. But the probable cause to search the cars at a time and place remote from the arrest existed independent of it and, therefore, evidence of unrelated crimes which was found was lawfully obtained.

[3] What constitutes probable cause under the Fourth Amendment is a determination which must be made on the facts. The test of reasonableness differs for cars and buildings. (Carroll v. United States, *supra.*) The constitutional protection from search and seizure afforded a man's home is greater than that afforded his car not only because cars are mobile, but also because they are less private. Certainly, the removal of the car was a reasonable decision. Its location was such that it could cause damage or be damaged. But more important, the nature of the evidence, blood stains, which were easily removable once the suspects were on notice, coupled with the fact that Richard LaBelle was not yet in custody,[2] indicated the necessity of safeguarding the car.

The People readily admit that at the time of the arrest for assault, Keating and Garrett did not have probable cause to search the car and

[2] A warrant for Richard LaBelle's arrest for assault, third degree, was issued at the same time as the warrant for Edward's arrest. They were delivered to separate officers for execution and Richard was not, in fact, arrested until two or three hours later.

the police did not have probable cause to arrest appellant for murder. But Lieutenant Brandon ordered the search of the LaBelle car when told of blood stains in the car by officer White. This fact was superimposed on other information known to him at the time as officer in charge of investigating the Snay murder. He knew that Edward LaBelle and his brother, Richard, had been in Cohoes in Edward's car the same evening that Rosemary disappeared and that on the same evening they had tried to pick up Mary Dolan. Furthermore, Rosemary's body had been found in a rural area indicating the possibility that a car was involved in the crime. Because this was a particularly bloody homicide, residual signs of blood might be expected to be found on clothes or car (officer Pollack observed blood stains on the car other than those White saw, after the car was delivered to him but before he entered it) Brandon's decision to search the car when White reported the blood stains was reasonable.

It has been said that "* * * sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment * * *" (Hill v. California, 401 U.S. 797, 91 S.Ct. 1106, 1111, 28 L.Ed.2d 484, 490.) There was probable cause for the search of the LaBelle automobile and apartment and the evidence obtained was properly admitted upon trial.

The judgment should be affirmed.

Judgment affirmed.

REYNOLDS, J. P., and STALEY, GREENBLOTT and SWEENEY, JJ., concur.

Decision Denying Motion to Suppress.

STATE OF NEW YORK, COUNTY COURT,

COUNTY OF RENSSELAER.

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

against

EDWARD F. LABELLE,

Defendant.

The defendant moves to suppress certain evidence pursuant to Section 813 C of the Code, contending that said evidence was garnered by reason of the unlawful search of the defendant's automobile primarily in that the automobile was not searched in the presence of the defendant, nor at the scene where the arrest took place.

That a search of an automobile without benefit of a Search Warrant may be considered as reasonable is axiomatic, and the test of whether such search is reasonable or unreasonable depends on the circumstances in each case, *Cooper v. State of California,* 87 S. Ct. 788. There is ample testimony justifying the arrest of the defendant and the seizure of his automobile and the only perplexing question is that of moving the automobile from the City of Troy to the Police Laboratory for subsequent search.

The People produced five (5) Police Officers of the State Police, all testifying to the hazardous road and weather conditions at the scene of the arrest, making it imperative that the automobile be moved from that locale, a search of the automobile there being well nigh impossible, and a potential source of danger to those using the highway in that vicinity. The Police Officers not only had a right to move the vehicle, but had an obligation to do so, *People v. Gatti,* 29 A. D. 2d 617.

Accordingly, the Motion to Suppress is denied.

Certificate of Service

February 25, , 1975

I certify that a copy of this brief and appendix has been mailed to the Attorney General of the State of New York.